

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Reyes Analyst: Kristina North Bill Number: AB 1811
Related Bills: See Legislative History Telephone: 845-6978 Introduced Date: February 3, 2000
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Low-Income Housing Credit/Includes Qualified Farmworker Housing Credit

SUMMARY

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would repeal the farmworker housing credits for construction or rehabilitation of qualified farmworker housing and for commercial lenders for a portion of the foregone interest income on loans related thereto. This bill would add, under the low-income housing credit provisions, \$500,000 for farmworker housing.

This analysis does not discuss the bill's insurance taxation provision as it does not impact this department.

EFFECTIVE DATE

As a tax levy, this bill would take effect immediately upon enactment and apply to taxable and income years beginning on or after January 1, 2000.

LEGISLATIVE HISTORY

AB 1903 (2000) would permit the state low-income housing tax credits to be transferred, sold or assigned separately from specified low-income tax credits.

AB 1626 (Stats. 2000, Ch. 3) increased the aggregate allocation amount for the low-income housing credit to \$50 million for each calendar year after 1999.

AB 97 (Stats. 1999, Ch. 893) provided that the chapter authorizing the Tax Credit Allocation Committee (the Committee) to allocate the credit would remain in effect as long as the federal low-income housing credit is in effect.

AB 168 (Stats. 1998, Ch. 9) increased the maximum allocation amount to \$50 million for calendar years 1998 and 1999 only.

SB 38 (Stats. 1996, Ch. 954) created the farmworker housing credit.

BACKGROUND

To date, no farmworker housing credits have been claimed or allocated under current law. Thus, the unallocated amounts for the 1998 and 1999 calendar years, totaling \$1 million dollars, would be added to subsequent year's aggregate maximum credit amount available for allocation.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ <u>X</u> PENDING

Department Director

Date

Alan Hunter for GHG

4/3/00

SPECIFIC FINDINGS

Existing federal law allows a credit to an owner of a qualified low-income housing project that is constructed, rehabilitated, or acquired. The credit is claimed over a 10-year period that generally begins with the tax year the project is placed in service. The credit is claimed as part of the general business credit, which allows unused credits to be carried back one year and carried forward 20 years. The credit amount is based on the specified "applicable percentage" of the qualified basis of each qualified low-income building. The "applicable percentage" varies depending on several factors, including when the housing was placed in service and whether it was federally subsidized. A state authority created to oversee the process must allocate the credit. A qualified low-income housing project is any project for residential rental property that meets the specified requirements for low-income tenant occupancy and gross rent restrictions. The property must continually comply with all requirements throughout a 15-year compliance period or a portion of the credit must be recaptured.

Current state law conforms to federal law with some modifications, as follows:

- ⌚ The state credit is claimed over four years, rather than 10.
- ⌚ The state credit is limited to projects located in California.
- ⌚ The state credit specifies different "applicable percentages" upon which the amount of credit is computed.
- ⌚ The Committee is allowed to allocate an annual maximum of \$50 million, plus unused or returned credit amounts from prior or current years. The Committee provides listings of qualified taxpayers to the Franchise Tax Board.
- ⌚ The state credit allows a corporation to assign any portion of the low-income housing credit to one or more affiliated corporations, provided the affiliation is 100% ownership.
- ⌚ The state credit may reduce the regular tax below the tentative minimum tax for purposes of the alternative minimum tax calculation.
- ⌚ The state credit may be carried over until exhausted if the credit exceeds the tax.

Current state law allows a credit for 50% of the qualified amount of costs paid or incurred for construction or rehabilitation of qualified farmworker housing within this state that satisfies the requirements of the Farmworker Housing Assistance Program. **Current state law** allows a credit to commercial lenders equal to 50% of the foregone interest income on loans used to finance qualified expenditures for qualified farmworker housing.

The taxpayer is required to 1) obtain credit certification from the Committee prior to paying or incurring costs; 2) retain a copy of the certification; and 3) provide the certification to the FTB upon request.

If the credit certification is obtained by fraud or misrepresentation, the entire amount of the credit previously allowed (as well as the applicable interest

amount) must be added to the taxpayer's tax in the taxable or income year in which the fraud or misrepresentation is identified. If a taxpayer fails to comply with the requirements of the Employee Housing Act, the Farmworker Housing Assistance Program or any other requirements contained within the tax credit section, a prorated amount of the credit previously allowed must be added to the taxpayer's tax liability.

The aggregate amount of credits granted for both PITL and B&CTL taxpayers for building or rehabilitating farmworker housing and for banks and financial corporations for foregone interest on farmworker housing loans may not exceed \$500,000 for any calendar year, increased by an amount equal to any unallocated credits from preceding calendar years. The credit is not allowed unless the taxpayer constructs or rehabilitates the property subject to the restrictions imposed by the Revenue and Taxation Code and the Farmworker Housing Assistance Program, and the credit may not be claimed until the first taxable or income year during which the construction or rehabilitation is complete and occupied by eligible farmworkers.

This bill would repeal the credit for construction or rehabilitation of farmworker housing for PITL and B&CTL taxpayers, as well as the credit for banks and financial corporations for foregone interest on farmworker housing.

Under the low-income housing credit allocation, this **bill** would specify that \$500,000 be allocated to qualified farmworker housing.

This bill would define "qualified farmworker housing" as housing located within this state that satisfies the requirements of the Farmworker Housing Assistance Program. The housing may be vacant or occupied and unlicensed at the initiation of construction or rehabilitation. This bill specifies that a farmworker housing "credit" would not be allowed unless the taxpayer constructs or rehabilitates the property in accordance with the codes, covenants, conditions, and restrictions of the low income housing credit and the Farmworker Housing Assistance Program. Requirements include but are not limited to a requirement that the taxpayer obtain, for Committee approval, a construction cost audit and certification of eligible costs from a qualified accountant and that subsequent to the construction or rehabilitation, the taxpayer owns or operates, or ensures the ownership or operation of the farmworker housing, pursuant to the requirements of this section.

Because the farmworker credit is located within the low-income housing credit section, the farmworker credit would reduce the regular tax below the tentative minimum tax for purposes of the alternative minimum tax calculation. Under present law, the farmworker credit cannot reduce regular tax below minimum tax.

Implementation Considerations

- ☐ Pursuant to author's staff, the author intended to provide a farmworker housing credit within the existing low-income housing credit structure. In its current form, this bill does not meet the author's intent. The state low-income housing credit modifies the credit allowed under federal law. However, the federal credit does not allow farmworker housing to qualify as a low-income housing project. Significant additional modifications would be needed to allow a

farmworker credit under the low-income housing credit and would further distance the state credit from the federal credit.

- ☐ Also, pursuant to author's staff, the \$500,000 limitation for farmworker housing should be included under the current law \$50 million aggregate amount for the low-income housing credit. However, in its current form, it is unclear whether the \$500,000 is in addition to the \$50 million earmarked for the low-income housing credit or included in the \$50 million aggregate cap. Clarification is need.
- ☐ Definitions are needed for "construction," "rehabilitation," "Farmworker Housing Assistance Program," and "Employee Housing Act."
- ☐ Within the definition of "qualified farmworker housing," this bill specifies that subsequent to the construction or rehabilitation of farmworker housing, the taxpayer "owns or operates or ensures the ownership and operation of the farmworker housing pursuant to the requirements of this section." However, no requirements are provided.
- ☐ This bill specifies that the farmworker housing need not be licensed at the initiation of construction or rehabilitation; however, it does not indicate whether it should be licensed at the conclusion of construction or rehabilitation to qualify.

Technical Consideration

Unless the author intends to eliminate the increased the cap from \$35 million to \$50 million, the bill should be amended to reflect current law.

FISCAL IMPACT

Departmental Costs

With the implementation considerations resolved, it is anticipated that the department costs would be minor.

Tax Revenue Estimate

For the purposes of the revenue estimate, this analysis is based on the author's intent that the farmworker credit be part of the total \$50 million low-income housing credit, not an additional \$500,000 credit under the same provision as the bill could be interpreted.

Based on that assumption, the revenue impact of this bill is estimated to be a revenue gain of \$500,000 or less annually, since the combined (low-income housing and farmworker housing) maximum aggregate credit amount that could be allocated for the two programs would be reduced from \$50.5 million to \$50 million.

BOARD POSITION

Pending.